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Letter to Hugh E. Witt, Administrator for Federal Procurement Policy, Office of Management and Budget; by Elmer B. Staats, Comptroller General.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-160725

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The Honorable Hugh E. Witt
Administrator for Federal
Procurement Policy
Office of Management and Budget

Dear Mr. Witt:

This is in response to your August 9, 1976 memorandum requesting comments on the Office of Federal Procurement Policy's proposed Regulations Nos. 1 and 2. Regulation No. 1, if adopted, would establish the Federal Procurement Regulation System. The System would include " * * * the procurement aspects of all interagency regulations, standards, guidelines, and other directives which are applicable to Federal contractors or subcontractors, or which are to be implemented through the Federal process." (Paragraph 5.a.)

Under paragraph 5.g. of the proposed Regulation executive agencies with specific authorities operable on a Government-wide basis, which relate to unique agency responsibilities and not solely to procurement considerations, would apparently be required to submit proposed regulations to the Administrator for Federal Procurement Policy prior to promulgation. Because paragraph 5.g. is restricted to "the procurement aspects of regulations issued by * * * executive agency[s]," it has no effect on the Standards, rules and regulations of the Cost Accounting Standards Board (CASB). A related problem, however, may arise because of the term "interagency" in paragraph 5.a., quoted above. There is a need to limit the term so that it is clear that it does not refer to the CASB. Unless this is done, executive agencies which are required to apply Standards, rules and regulations of the CASB may fail to do so. This could occur when an executive agency views a CASB issuance to be inconsistent with the FPR or ASPR. As we understand the relevant law, were such an inconsistency to arise, the executive agencies would be obliged to comply with the CASB issuance, and the FPR and ASPR would have to be revised to accommodate that issuance. In fact, of course, it is unlikely that such an inconsistency will develop. Thus far, the CASB has sought to avoid such problems and has been completely successful.

Paragraph 7 of the proposed Regulation should specifically exclude from its scope any OFPP regulations and any changes or additions to the ASPR and FPR which are adoptions of the substance of issuances duly promulgated pursuant to the specifications of the Cost Accounting Standards Board. To the extent appropriate, the CASB will already have obtained public participation. Moreover, since adoption in OFPP regulations ASPR and FPR of such promulgations is essentially ministerial in nature, holding public hearings with respect to the substance of the issuances would be both inappropriate and unproductive and might well serve only to diminish the overall effectiveness of the public participation process.

Accordingly, to avoid any misunderstanding of the scope of Regulation No. 1, I strongly urge that the words "and Cost Accounting Standards Board Standards, rules, and regulations" be inserted between the words "policies" and "which" appearing at the third line of paragraph 7.f.

We have no comments on proposed Regulation No. 2.

Sincerely yours,

SIGNED ELMER B. STAATS
Comptroller General
of the United States